

## Department of Energy

## § 600.22

### § 600.21 Access to records.

(a) In addition to recipient and sub-recipient responsibilities relative to access to records specified in §§ 600.153, 600.242 and 600.342, for any negotiated contract or subcontract in excess of \$10,000 under a grant or cooperative agreement, DOE, the Comptroller General of the United States, the recipient and the subrecipient (if the contract was awarded under a financial assistance subaward), or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to that contract or subcontract, in order to make audit, examination, excerpts, and copies.

(b) The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor.

[61 FR 7166, Feb. 26, 1996, as amended at 74 FR 44276, Aug. 28, 2009]

### § 600.22 Disputes and appeals.

(a) *Informal dispute resolution.* Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures, to the extent practicable.

(b) *Alternative dispute resolution (ADR).* Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) *Final determination.* Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of

such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by the Department and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(d) *Right of appeal.* Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the cognizant Senior Procurement Executive (SPE) for either DOE or the National Nuclear Security Administration (NNSA). The mailing address for the DOE SPE is Office of Procurement and Assistance Management, 1000 Independence Ave., SW, Washington, DC 20585. The mailing address for the NNSA SPE is Office of Acquisition and Supply Management, 1000 Independence Ave., SW., Washington, DC 20585.

(e) *Effect of appeal.* The filing of an appeal with the SPE shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the SPE, or to preserve its ability to provide relief in the event the SPE decides in favor of the appellant.

(f) *Review on appeal.* (1) The SPE shall have no jurisdiction to review

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to § 600.114, § 600.212, or § 600.304;

(ii) DOE denial of a request for a deviation under § 600.4, § 600.103, § 600.205, or § 600.303 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under § 600.125, § 600.127, § 600.222, § 600.230, § 600.315, or § 600.317 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under § 600.162(a)(1), (2), (3) or (5), § 600.243(a)(1), (a)(3), or § 600.352(a)(1), (2), (3) or (5) for suspensions only; or § 600.162(a)(4), § 600.243(a)(4) or § 600.352(a)(4) for actions disapproving renewal applications or other requests

## § 600.23

for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under § 600.144, § 600.236, or § 600.331 of this part or under another term or condition of the award;

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the Board shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award for cause, in whole or in part, by DOE;

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the Board shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the Board shall be the final decision of the Department.

[61 FR 7166, Feb. 26, 1996, as amended at 74 FR 44276, Aug. 28, 2009]

## § 600.23 [Reserved]

## § 600.24 Noncompliance.

(a) Except for noncompliance with nondiscrimination requirements under 10 CFR part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth:

## 10 CFR Ch. II (1–1–11 Edition)

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under § 600.122(n), § 600.162(a), § 600.243(a), § 600.312(g), or § 600.352(a) of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in § 600.122(n), § 600.162(a), §§ 600.243(a), 600.312(g), or 600.352(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

(1) There is evidence the award was obtained by fraud;

(2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award; or

(3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action.

[61 FR 7166, Feb. 26, 1996, as amended at 64 FR 56420, Oct. 20, 1999; 74 FR 44277, Aug. 28, 2009]

## § 600.25 Suspension and termination.

(a) *Suspension and termination for cause.* DOE may suspend or terminate an award for cause on the basis of:

(1) A noncompliance determination under § 600.24, § 600.122(n), § 600.162(a), § 600.243(a) or § 600.352(a); or

(2) A suspension or debarment of the awardee under 2 CFR 180 and 901.

(b) *Notification requirements.* Except as provided in § 600.24, § 600.162(a), § 600.243(a), or § 600.352(a) before suspending or terminating an award for cause, DOE shall mail to the awardee (by certified mail, return receipt requested) a separate written notice in addition to that required by § 600.24(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate: